

Appeal from decision of Alaska State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. AA 37634 through AA 37648.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary

with authority to waive or excuse non-compliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Procedure: Adjudication -- Evidence: Generally --Evidence: Presumptions -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he, in fact, did so, in enacting the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), Congress specifically placed the burden on the claimant to show, by his compliance with the Act's requirements, that the claim has not been abandoned and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

APPEARANCES: Paul P. Smith, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Paul P. Smith 1/ appeals the Alaska State Office, Bureau of Land Management (BLM), decision of February 9, 1983, which declared unpatented placer mining claims, 2/ AA 37634 through AA 37648, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM prior to December 31, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant states that the annual assessment work has been properly recorded each year, except for 1981, since the claims were located from 1919 to 1940. His uncle, Michael Greaskak, who had been doing all the assessment

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1/ The claims are apparently owned by Paul P. Smith, Mary S. Abruska, Ida Marie Williams, and George W. Smith.

2/ The names of the placer claims are Horseshoe Bench No. 2, Alpine Discovery, Veronica Bench, Wick Discovery Montezuma Creek, One Above Wick Discovery Montezuma Creek, Castle Bench, November Moon Fraction, Discovery Bench Left Unit, Two Below Discovery, Wick Discovery, One Above Wick Discovery, 2 Below First Tier of Benches, 3 Below First Tier of Benches, Discovery Association, One Above Discovery.

work and recording the annual proofs of labor was partially paralyzed in 1979 so that the recording of the proof of labor in 1981 was overlooked. There was no intention to abandon any of these claims as was shown by the 1982 proof of labor filed with BLM December 8, 1982, after being recorded in the Bethel Recording District December 6, 1982.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located on or before October 21, 1976, must file notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim in the proper BLM office on or before December 30 of every calendar year following the date of recording the claims with BLM. This requirement is mandatory, not discretionary, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

[2, 3] The Board responded to arguments similar to those presented here in Lynn Keith, *supra*. With respect to the conclusive presumption of abandonment and appellants' argument that the intent not to abandon was manifest, we stated:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

\* \* \* Appellant also argues that the intention not to abandon these claims was apparent \* \* \*. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

53 IBLA at 196-97, 88 I.D. at 371-72.

The responsibility for complying with the recordation requirements rested with appellant. This Board has no authority to waive or excuse failure to comply with the statutory requirements. Lynn Keith, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

